

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

ERIC GARCIA,

Petitioner,

v.

**RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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CIVIL ACTION NO. 2:12-CV-00256

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Before the Court are Respondent's motion for summary judgment (D.E. 13) and Petitioner's motion for an evidentiary hearing (D.E. 15). On January 10, 2013, United States Magistrate Judge B. Janice Ellington issued a memorandum and recommendation wherein she recommends that Respondent's motion for summary judgment be granted; that Petitioner's application for habeas corpus relief be denied with prejudice; that Petitioner's request for an evidentiary hearing be denied; and that a certificate of appealability be denied. (D.E. 16 at 25.)

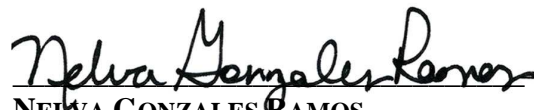
Petitioner filed objections to the Magistrate Judge's memorandum and recommendation on February 4, 2013. (D.E. 19.) Petitioner is entitled to a de novo disposition of those portions of the Magistrate Judge's memorandum and recommendation to which timely objections were filed. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *Koetting v. Thompson*, 995 F.2d 37, 40 (5th Cir. 1993). Petitioner's objections were not timely filed. However, the Magistrate Judge's memorandum and recommendation was returned undeliverable, and it appears that Petitioner may have been transferred to a different prison unit. (D.E. 17.) Petitioner did not acknowledge

receipt of the Magistrate Judge's memorandum and recommendation until January 23, 2013. (D.E. 18.) Accordingly, the Court will consider Petitioner's late-filed objections.

Petitioner objects to each and every section of the Magistrate Judge's memorandum and recommendation, in turn, including the standard of review applied by the Magistrate Judge. The Court finds that Petitioner's objections to the memorandum and recommendation are unfounded. The Magistrate Judge gave due consideration to Petitioner's claims and correctly analyzed the factual and legal issues presented. Accordingly, Petitioner's objections are **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's memorandum and recommendation (D.E. 16), as well as Petitioner's objections (D.E. 19), and all other relevant documents in the record, and having made a de novo disposition of the objected-to portions of the Magistrate Judge's memorandum and recommendation, the Court overrules Petitioner's objections and adopts as its own the findings and conclusions of the Magistrate Judge. Accordingly, Respondent's motion for summary judgment (D.E. 13) is **GRANTED**; Petitioner's application for habeas corpus relief (D.E. 1) is **DENIED WITH PREJUDICE**; Petitioner's request for an evidentiary hearing (D.E. 15) is **DENIED**; and a certificate of appealability is **DENIED**.

ORDERED this 29th day of May 2013.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE